

Jason S. Brookner
Texas Bar No. 24033684
Andrew K. York
Texas Bar No. 24051554
Drake M. Rayshell
Texas Bar No. 24118507
GRAY REED
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
dyork@grayreed.com
drayshell@grayreed.com

ATTORNEYS FOR PATRICK DAUGHERTY

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

SCOTT BYRON ELLINGTON,

Plaintiff,

v.

PATRICK DAUGHERTY,

Defendant.

Adv. No. 22-03003-sgj
*Removed from the 101st Judicial District
Court of Dallas County, Texas
Cause No. DC-22-00304*

¹ The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

**PATRICK DAUGHERTY'S RESPONSE TO SCOTT ELLINGTON'S MOTION FOR
SETTING AND REQUEST FOR EXPEDITED HEARING**

Patrick Daugherty (“Daugherty”), for his Response to Scott Ellington’s (“Ellington”) Motion for Setting and Request for Expedited Hearing [Docket No. 4] (the “Motion to Expedite”), respectfully represents:

1. Despite the contentions in the Motion to Expedite, there is no emergency here, and certainly none necessitating an expedited hearing on Ellington’s Motion to Abstain and to Remand [Docket No. 3] (the “Motion to Remand”). Indeed, any alleged “emergency” that may exist was manufactured by Ellington himself as a result of his own delays and failures to act.
2. In the Motion to Expedite, Ellington contends that a hearing tomorrow (January 26, 2022) is “necessary” because that is the date on which the TRO issued by the state court is set to expire. But Ellington has known since the day the TRO was issued (January 11, 2022) that it was set to expire by its own terms on January 26, in accordance with Rule 680 of the Texas Rules of Civil Procedure, regardless of whether this action was pending in Texas State Court or in this Court.
3. Daugherty removed this action from Texas State Court to this Court on January 18, 2022, and served Ellington’s state court counsel with the removal papers immediately upon filing. Thus, Ellington has been on notice for more than a week that he needed to take action *in this Court* before the TRO expired if he wished to extend the same or otherwise protect his rights. Yet, Ellington sat on his hands until the proverbial eleventh hour.²

² The Motion to Expedite alleges that Ellington “moved quickly to . . . confer with opposing counsel regarding the same.” Docket No. 4 at ¶ 3. The reality, however, is that Ellington’s counsel did not seek to confer with the undersigned until 12:45 p.m. on January 25, 2022, at which time Ellington’s counsel left a voicemail for Mr. York. At 1:08 p.m., 23 minutes later, Ellington’s counsel emailed a subset of Daugherty’s counsel requesting a “meet and confer . . . regarding the need to file a Motion to Abstain and to Remand.” See Exhibit A. Notably absent from the email, however, is any mention of an emergency or expedited

4. In support of his request for expedited consideration, Ellington states that “[t]he State Court has also set a temporary injunction hearing for January 26, 2022.” This, however, is a knowing misstatement of the facts: there is no imminent temporary injunction hearing set in state court. To the contrary, the state court canceled the temporary injunction once the case was removed to this Court. *See Exhibit B.* This reality, in and of itself, obviates any “emergency” or any other need to hear the Motion to Remand on anything other than normal 21-day notice.

5. There is simply no emergency of any kind that has been presented to the Court that warrants any expedited relief. To the extent any “emergency” may exist, it was either self-inflicted, or the result of the kind of gamesmanship this Court has seen time and time again from various Highland executives/insiders. Daugherty should not be rushed in his defense, making his arguments or protecting his rights as a result of Ellington’s own procrastination.

6. In spite of the above, with all rights reserved, and even though Daugherty both opposes Ellington’s requested injunctive relief and continues to assert that the state court improperly issued the TRO despite Ellington’s failure to meet his burden of proof, Daugherty is nonetheless willing to abide by the terms of the TRO pending the Court’s disposition of Ellington’s Motion to Remand.³ This agreement should be more than sufficient to provide Ellington with interim protection. This also gives the parties the opportunity to fully brief the issues and arguments raised in the Motion to Remand.

hearing. It was only at the meet and confer teleconference at 4:00 p.m. on January 25, that Ellington’s counsel raised, for the first time, the fact that an emergency hearing on the Motion to Remand would be sought.

³ Daugherty reserves all rights to oppose any other temporary or permanent injunctive relief that Ellington may request, whether made to this Court or any other tribunal.

CONCLUSION

For the foregoing reasons, this Court should deny Ellington's Motion to Expedite, and set the Motion to Remand for briefing and hearing in the normal course.

Respectfully submitted this 25th day of January, 2022.

GRAY REED

By: /s/ Jason S. Brookner
Jason S. Brookner
Texas Bar No. 24033684
Andrew K. York
Texas Bar No. 24051554
Drake M. Rayshell
Texas Bar No. 24118507
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
dyork@grayreed.com
drayshell@grayreed.com

ATTORNEYS FOR PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of January, 2022, he caused a true and correct copy of the foregoing pleading to be served via the Court's electronic case filing system (ECF) on all parties to this proceeding who have so-subscribed.

/s/ Jason S. Brookner
Jason S. Brookner

EXHIBIT A

From: [Zinecker, Katie](#)
To: [Drew K. York](#)
Subject: [EXTERNAL] RE: Adv. Pro. No. 22-03003-s gj; Ellington v. Daugherty
Date: Tuesday, January 25, 2022 2:50:52 PM

Hi Drew,

I'm available at 4 today and will plan to call you then. Thanks,

Katie

Katie Zinecker

Associate, Litigation
Baker & McKenzie LLP
Direct: +1 713 427 5083
Cell +1 817 913 5901

From: Drew K. York <dyork@grayreed.com>
Sent: Tuesday, January 25, 2022 1:59 PM
To: Zinecker, Katie <Katie.Zinecker@bakermckenzie.com>
Subject: [EXTERNAL] RE: Adv. Pro. No. 22-03003-s gj; Ellington v. Daugherty

Hi Katie,

I'm available starting at 4 today. I'm also generally available tomorrow morning.

Regards,
Drew

Drew K. York

Partner
Tel 469.320.6114 | Fax 469.320.6883 | dyork@grayreed.com
1601 Elm St., Suite 4600 | Dallas, TX 75201
grayreed.com | [Connect with me on LinkedIn](#)



CONFIDENTIALITY NOTICE: This electronic transmission and any attachments constitute confidential information which is intended only for the named recipient(s) and may be legally privileged. If you have received this communication in error, please contact the sender immediately. Any disclosure, copying, distribution or the taking of any action concerning the contents of this communication by anyone other than the named recipient(s) is strictly prohibited.

From: Zinecker, Katie <Katie.Zinecker@bakermckenzie.com>
Sent: Tuesday, January 25, 2022 1:08 PM
To: Ruth Ann Daniels <rdaniels@grayreed.com>; Drew K. York <dyork@grayreed.com>; Drake Rayshell <drayshell@grayreed.com>
Cc: Dandeneau, Debra A. <Debra.Dandeneau@bakermckenzie.com>; Grese, Frank <Frank.Grese@bakermckenzie.com>; Hartmann, Michelle

<Michelle.Hartmann@bakermckenzie.com>; Frances A. Smith <Frances.Smith@judithwross.com>;

Eric Soderlund <Eric.Soderlund@judithwross.com>

Subject: [EXTERNAL] Adv. Pro. No. 22-03003-sgj; Ellington v. Daugherty

Hi counsel,

Following up my voicemail to Mr. York, we would like to meet and confer with you regarding the need to file a Motion to Abstain and to Remand on behalf of Scott Ellington in the above captioned adversary proceeding. **Please advise if you have availability to briefly discuss this afternoon.** Alternatively, you are welcome to call my line, 713-427-5083.

Thank you,

Katie

Katie Zinecker

Associate, Litigation
Baker & McKenzie LLP
700 Louisiana, Suite 3000
Houston, TX 77002
United States
Tel: +1 713 427 5000
Direct: +1 713 427 5083
Fax: +1 713 427 5099
katie.zinecker@bakermckenzie.com



GLOBAL LITIGATION FORCE

Leading multijurisdictional disputes with deep local roots

[Website](#) | [Facebook](#) | [LinkedIn](#) | [Twitter](#) | [YouTube](#)

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit www.bakermckenzie.com/disclaimers for other important information concerning this message.

EXHIBIT B

Case Information

DC-22-00304 | SCOTT BYRON ELLINGTON vs. PATRICK DAUGHERTY

Case Number
DC-22-00304
File Date
01/11/2022

Court
101st District Court
Case Type
OTHER (CIVIL)

Judicial Officer
WILLIAMS, STACI
Case Status
CLOSED

Party

PLAINTIFF
ELLINGTON, SCOTT BYRON

Active Attorneys ▾
Lead Attorney
PETTIT, JULIE A
Retained

DEFENDANT
DAUGHERTY, PATRICK

Address
3621 CORNELL AVE.
DALLAS TX 75205

Bond

Bond Type	Bond Number	Bond Amount	Current Bond Status
-----------	-------------	-------------	---------------------

TRO CASH BOND

\$2,500.00

POSTED

Disposition Events

01/18/2022 Judgment ▾

DEFENDANT'S NOTICE OF REMOVAL TO FEDERAL COURT

Judicial Officer

WILLIAMS, STACI

Judgment Type

ALL OTHER DISPOSITIONS

Judgment

Total Judgment: of \$0.00

Awarded To: DAUGHERTY, PATRICK

Awarded Against: ELLINGTON, SCOTT BYRON

Events and Hearings

01/11/2022 NEW CASE FILED (OCA) - CIVIL

01/11/2022 ORIGINAL PETITION ▾

ORIGINAL PETITION

01/11/2022 ISSUE CITATION ▾

ISSUE CITATION - PATRICK DAUGHERTY

01/11/2022 ISSUE TRO AND NOTICE ▾

ISSUE TRO - PATRICK DAUGHERTY

ISSUE NOTICE - PATRICK DAUGHERTY

01/12/2022 TRO HEARING ▾

ORIGINAL PETITION

Judicial Officer

WILLIAMS, STACI

Hearing Time

3:30 PM

Comment

JULIE PETTIT * AD HOC PER JUDGE WILLIAMS

01/12/2022 ORDER - TEMPORARY RESTRAINING ORDER ▾

ORDER - TEMPORARY RESTRAINING ORDER

01/12/2022 NON-SIGNED PROPOSED ORDER/JUDGMENT ▾

(PROPOSED) TEMPORARY RESTRAINING ORDER

Comment

(PROPOSED) TEMPORARY RESTRAINING ORDER

01/13/2022 TRUST RECEIPT

01/14/2022 BOND FILED

01/14/2022 CORRESPONDENCE - LETTER TO FILE ▾

CORRESPONDENCE LETTER

01/18/2022 NOTICE OF REMOVAL TO FEDERAL COURT ▾

DEFENDANT'S NOTICE OF REMOVAL TO FEDERAL COURT

Comment

DEFENDANT'S

01/18/2022 CITATION ▾

Unserved

Anticipated Server
ESERVE

Anticipated Method
Comment
PATRICK DAUGHERTY

01/18/2022 NOTICE ▾

Unserved

Anticipated Server
ESERVE

Anticipated Method
Comment
PATRICK DAUGHERTY

01/18/2022 TEMPORARY RESTRAINING ORDER ▾

Unserved

Anticipated Server
ESERVE

Anticipated Method
Comment
PATRICK DAUGHERTY

01/19/2022 RETURNED MAIL ▾

RETURNED MAIL

Comment
NOTICE OF STATUS CONFERENCE HEARING - CHRISTOPHER J MUNDT

01/26/2022 Temporary Injunction ▾

Judicial Officer
WILLIAMS, STACI

Hearing Time
9:30 AM

Cancel Reason
REQUESTED BY ATTORNEY/PRO SE

Financial

ELLINGTON, SCOTT BYRON				
Total Financial Assessment				\$379.00
Total Payments and Credits				\$379.00
1/12/2022 Transaction				\$366.00
Assessment				
1/12/2022 CREDIT CARD -	Receipt # 1565-	ELLINGTON, SCOTT		(\$229.00)
TEXFILE (DC)	2022-DCLK	BYRON		
1/12/2022 STATE CREDIT				(\$137.00)
1/14/2022 Transaction				\$5.00
Assessment				
1/14/2022 PAYMENT (CASE FEES)	Receipt # 2349-	ELLINGTON, SCOTT		(\$5.00)
	2022-DCLK	BYRON		
1/14/2022 Transaction				\$8.00
Assessment				
1/14/2022 CREDIT CARD -	Receipt # 2553-	ELLINGTON, SCOTT		(\$8.00)
TEXFILE (DC)	2022-DCLK	BYRON		

Documents

ORIGINAL PETITION
 ORDER - TEMPORARY RESTRAINING ORDER
 (PROPOSED) TEMPORARY RESTRAINING ORDER
 CORRESPONDENCE LETTER
 ISSUE CITATION - PATRICK DAUGHERTY
 ISSUE TRO - PATRICK DAUGHERTY
 ISSUE NOTICE - PATRICK DAUGHERTY
 DEFENDANT'S NOTICE OF REMOVAL TO FEDERAL COURT
 RETURNED MAIL